

National Foreign Intelligence Program Manual (NFIPM)

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NFIPM Section 3 (U) Electronic Surveillances and Unconsented Physical Searches

Section 3-01 (U) Consensual Monitoring

Superseded by the Domestic Investigations and Operations Guide (DIOG), Section 11.5, dated 12/16/2008

Eff. Date: 12/16/2008

Section 3-02 (U) Volunteered Tape Recordings

- A. (U) Volunteered non-FBI ELSUR recordings should be retained for reasonable periods of time. Their receipt should be documented in case files.
- B. (U) If determined to be non-relevant to FBI concerns, contributors should be requested to retrieve them within specified reasonable periods of time. If not retrieved, they may be destroyed.
- C. (U) The disposition of volunteered tape recordings should be appropriately documented (e.g., via FD-597s and FD-192s).

EFFDATE: 04/29/2002 MCRT# 1262 Div. D5 Cav: SecClass: Unclassified

Section 3-03 (U) DELETED

Section 3-04 (U) Pen Register and Trap and Trace Use

Superseded by the Domestic Investigations and Operations Guide (DIOG), Sections 11.11 and 11.12, dated 12/16/2008

Eff. Date: 12/16/2008

Section 3-05 (U) Unconsented Electronic Surveillances

- A. (U) The following requirements pertain to the acquisition, retention and dissemination of nonpublicly available communications and other information resulting from electronic surveillance (ELSUR) on foreign powers, and USPER and non-USPER agents of foreign powers.

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Section 3-06 (U) Electronic Surveillance Minimization, Logs and Indexing

Superseded by Corporate Policy Directive #0137D, titled "(S) Standard Minimization Procedures Implementation Policy", dated 11/01/2008.

Eff. Date: 11/01/2008

Section 3-07 (U) Destruction of National Security Electronic Surveillance Recording Media

A. ELSUR Disposition forms

1. FD 986 Disposition of Consensual Monitoring Electronic Surveillance (ELSUR) Media Acquired in Criminal Investigations [REDACTED]

2. FD-987 Disposition of Foreign Intelligence Electronic Surveillance (ELSUR) Media ([REDACTED]) and

3. FD-989 Volunteered/Subpoenaed Media Pertaining to Criminal/Noncriminal Matters ([REDACTED]) have been developed to cover the following ELSUR media.)

4. FD-988 Title III (FD) Court - ordered wiretaps

B. The legal destruction of no longer needed ELSUR media may be undertaken when certain conditions have been met:

1. General Destruction Guidelines (Excludes Volunteered Media)

a. The following statutory/regulatory requirements must be met in determining destruction eligibility for all original FBI generated ELSUR media:

i. A minimum period of [REDACTED] must have elapsed from the date the media was intercepted or in Title III investigations [REDACTED] from the date the media was last sealed by the court.

ii. Media must have no known historical value, i.e., well known public figure(s) or events, etc.)

iii. Media containing evidence of a criminal offense will be retained until a decision is rendered by prosecutory authorities. If they decide to prosecute, media will be retained until the end of the prosecution and appeal processes.

iv. Media required to be retained by any other legal rules or judicial orders will be retained in accordance with the requirements of that law or order. Furthermore, FBI policy requires that the following conditions be satisfied in determining destruction eligibility for all original FBI generated ELSUR media.

v. There are no pending fugitive issues.

vi. There are no pending or anticipated litigation/prosecutorial issues.

vii. Regarding Title III investigations, a minimum of [REDACTED] from receipt of the notice of inventory has passed. (See 18, USC, 2520(e) and 18, USC, 2518(8)(d))

viii. The media must no longer have investigative or intelligence value.

ix. Regarding Title III and Consensual monitoring in criminal investigations, the case must be in a closed status.

b. Copies of the FBI-generated ELSUR media that are created for convenience or reference are not Federal records and are not subject to the mandatory retention [REDACTED]. This holds as well for copies of FBI-generated ELSUR media that are uploaded into searchable databases,

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such as for data-mining purposes. As soon as it is determined that copies are not of operational value and no longer serve a purpose to the office they may be destroyed. With respect to mandatory destruction, reasonable efforts should be made to destroy all copies of FBI generated ELSUR media no later than the date the original is destroyed. Databases composed solely of copies of media, and which are no longer in use, should be reviewed for destruction in their entirety no later than [redacted] from the date they were received.

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2. Destruction Guidelines for Volunteered Media (non-FBI Media)

a. Non-FBI ELSUR media, voluntarily turned over to the FBI by anyone outside the FBI, shall be retained for a reasonable period of time, to be determined by the office in possession of the media. Receipt of such media should be appropriately documented in the case file. When it is determined the media is not of evidentiary value or no longer serves a purpose to the office, a reasonable attempt should be made to return the original to the contributor in those instances where return of the media had been requested or was otherwise anticipated. In such cases, the contributor should be contacted and advised to retrieve the media at the local FBI field office within a specified reasonable period of time. In the event the contributor does not wish to have the media returned, or no effort to retrieve the media has been made within a reasonable period of time, the media may be destroyed. Copies of the volunteered media may be destroyed at any time.

b. RMD, pursuant to the authority vested in it by the Director, has determined that volunteered media is not a Federal record (unlike FBI-generated ELSUR media) and should be managed in accordance with relevant FBI policy and the Federal Rules of Evidence. RMD has included a form for volunteered media.

3 The destruction of eligible ELSUR media is mandatory in order to control the growth of records in offices through the systematic disposition of unneeded records. Therefore, all offices are required to actively utilize the authority provided within to alleviate the overcrowding of older, unneeded ELSUR media throughout FBI offices and reduce potential vulnerabilities to the Bureau resulting from deteriorating and aging media.

4 Procedures for the physical destruction of eligible ELSUR media are provided in the FBI Security Policy Manual, entitled "Destruction of Classified and Sensitive Material"

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[redacted] Offices can also download copies by accessing the Security Division Intranet website listed under Communications Security Policy.

5. The foregoing notwithstanding:

- a. Recorded media containing communications that reasonably appear to be "Brady" material shall be retained as if they contained evidence of crimes;
- b. Recorded media containing privileged communications shall be retained until DOJ OIPR orders them to be destroyed.

Section 3-08 (U) Operational Support to the Intelligence Community

Superseded by Corporate Policy Directive #0309D, titled "Counterintelligence Division Policy Implementation Guide", dated 08/09/2010.

Eff. Date: 08/09/2010

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**Section 3-09 (U) Operational Operational Technology Division (OTD)
Technical Assistance**

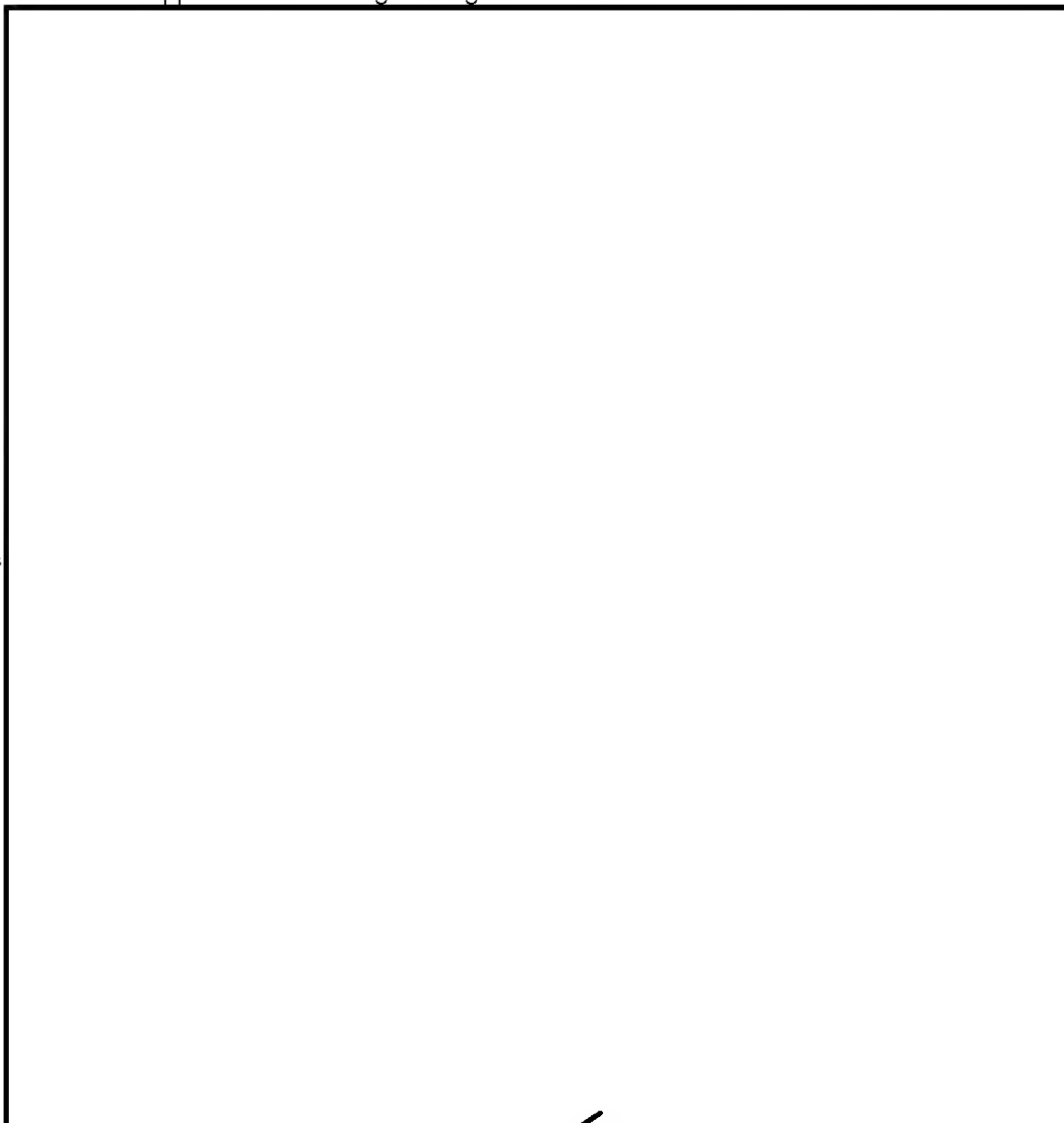
Superseded by Corporate Policy Directive #0170D titled [REDACTED]
[REDACTED] dated 02/26/2009.

Effective Date: 02/26/2009.

**Section 3-10 (U) Operational Operational Technology Division (OTD)
Technical Assistance Support to the Intelligence Community**

A. (U) OTD The Operational Technology Division provides consultation, equipment and installation support in the following investigative endeavors:

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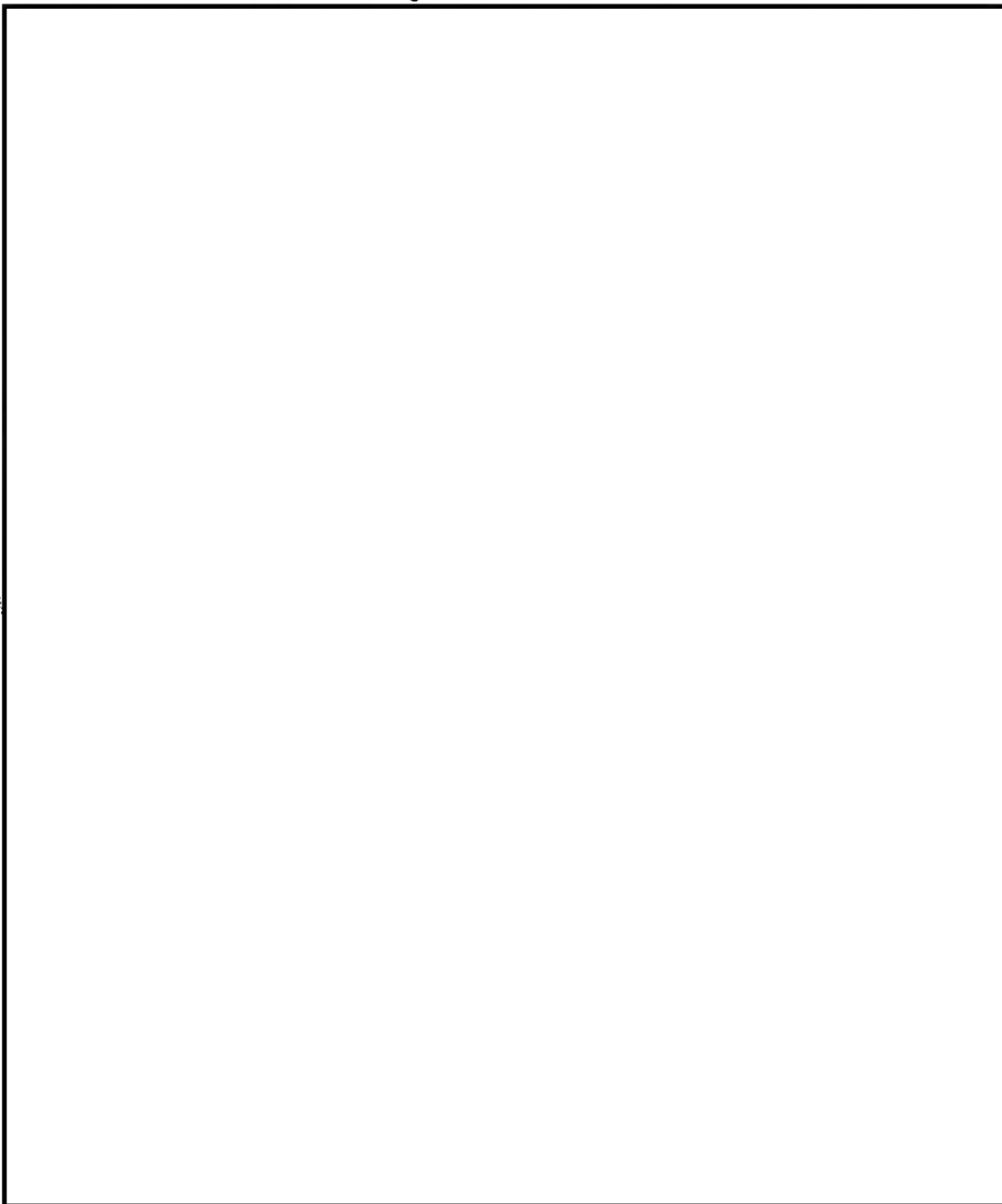
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14. (U) The Science & Technology Law Unit (STLU) of the InvestigativeInvestiative Law Branch (ILB) of the Office of General Counsel is responsible in the first instance for advising OTD on legal issues arising from the design, development, deployment and use of OTD capabilities in both classified and non-classified investigations.

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Section 3-11 (U) Unconsented Physical Searches

Superseded by multiple sections in the Domestic Investigations and Operations Guide (DIOG), dated 12/16/2008, and Corporate Policy Directive #0309D, titled "Counterintelligence Division Policy Implementation Guide", dated 08/09/2010.

Section 3-12 (U) Tax Return Information

Superseded by Corporate Policy Directive #0309D, titled "Counterintelligence Division Policy Implementation Guide", dated 08/09/2010.

Eff. Date: 08/09/2010

Section 3-13 (U) Searches of Mail Without Consent

Superseded by Corporate Policy Directive #0309D, titled "Counterintelligence Division Policy Implementation Guide", dated 08/09/2010.

Eff. Date: 08/09/2010

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Section 3-14 (U) Unconsented Physical Search Minimization, Logs and Indexing

A. (U) Information concerning USPERs acquired through unconsented FISA physical searches may only be used in accordance with minimization procedures. See: id. Title 50, U.S.C., Section 1821(4). Therefore, the following procedures have been established as respects the acquisition, retention, and dissemination of nonpublicly available information concerning unconsented USPERs that is collected in the course of physical searches [REDACTED]

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1. Guidance for U.S. person status is found in the Attorney General's Guidelines for FBI National Security Investigations And Foreign Intelligence Collection, Section I.C. The general presumption is that all parties subjected to unconsented physical searches are assumed to be USPERs, unless reasonable bases exist to conclude otherwise. In on-line investigations if it is not known if the individual is inside or outside the U.S. there is a presumption of non-U.S. person status. If a person is known or believed to be outside the U.S. there is a presumption on non-U.S. person status.

2. Where a physical search authorized and conducted pursuant to Title 50 U.S.C., Section 1824 involves the residence of a United States person, and, at any time after the search the Attorney General determines there is no national security interest in continuing to maintain the secrecy of the search, the Attorney General shall provide notice to the United States person whose residence was searched of the fact of the search conducted pursuant to this chapter and shall identify any property of such person seized, altered, or reproduced during such search. (See: Title 50, U.S.C., Section 1825 (b)).

3. Physical searches may include: inspection; examination; reproduction; temporary removal; marking for identification; alteration; substitution or seizure of information, materials and properties which are located in the premises or properties which are authorized for search.

[REDACTED]

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a) This does not limit the collection of information which may involve the conduct of criminal activities.

5. Permanent written logs of items searched must be retained.

[REDACTED]

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6. Should it become apparent during the course of a search of a targeted premises or property that the searched information, material or property contains a communication between a person and an attorney who is representing that person in a matter under indictment, the information, material or property must be: placed under seal, DOJ's OIPR notified, and an appropriate notation entered in the log.

7. All other information, materials and properties containing communications between persons and their attorneys [REDACTED] may be retained.

a) Such information may be disseminated [REDACTED]

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b) Such information may be disseminated [REDACTED]

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8. The logged identities of USPERs may be indexed into the General Indices [REDACTED]

9. Information, material or properties which are acquired during the course of FISA physical searches, which concern USPERs [REDACTED] which do contain evidence of criminal activities, may only be used for law enforcement purposes. b7E

10. Destruction of Records Information obtained by FISA order may be destroyed pursuant to the guidelines set forth in the Attorney General Standard Minimization Procedures (SMP) and the agreement between the FBI and the National Archives, Standard Form 115, signed by the FBI on 3/28/03. SMP provides that records concerning U.S. persons shall be destroyed within a reasonable period (construed as [REDACTED] except:

- a. tapes containing evidence of a criminal offense will be retained until a decision is rendered by prosecutive authorities. If it is decided to prosecute, tapes will be retained until the end of the prosecution process; (U)
- b. tapes containing communications that reasonably appear to be exculpatory ("Brady") material shall be retained as if they contained evidence of a crime. (U)
- c. tapes concerning privileged communications will be retained until ordered to be destroyed by the Department of Justice, and; (U)
- d. tapes required to be retained by rule of law or judicial order will be retained in accordance with the requirements of that rule or order. (U)

In addition, the National Archives would like the FBI to retain information the FBI determines is of historical value.

11. The circumstances and the results of FISA physical searches must be reported to DOJ's OIPR [REDACTED]

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Eff. Date: 08/09/2010

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Section 3-16 (U) Special Projects Technology for Use in Counterintelligence Division (CD) and Counterterrorism Division (CTD) Investigations

Superseded by Corporate Policy Directive #0309D, titled "Counterintelligence Division Policy Implementation Guide", dated 08/09/2010.

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